

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:11-CT-3124-BO

SAMMY USSERY,)
Plaintiff,)
)
v.) O R D E R
)
SGT. MANSFIELD,)
Defendant.)

Sammy Ussery, an inmate within the custody of North Carolina, filed this 42 U.S.C. § 1983 action. The matter is properly before the court for a frivolity determination pursuant to 28 U.S.C. § 1915(e)(2). A claim having no arguable basis in law or in fact may be dismissed as frivolous. Neitzke v. Williams, 490 U.S. 319 (1989). As for the complaint, it is ALLOWED to proceed.

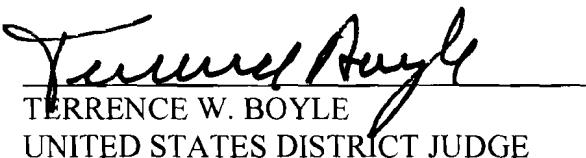
In addition to his complaint, Ussery has two other motions pending at this time. Ussery has filed a motion for appointment of counsel (D.E. # 3), and a motion for medical records (D.E. #4). Both motions are denied for the reasons that follow.

As for the motion for medical records, the court does not intervene in the initial requests for the production of documents, affidavits, and other discovery material. Plaintiff must request the documents and admissions from the appropriate parties as required and outlined in the Federal Rules of Civil Procedure and Local Rules. Therefore, the motions seeking discovery (D.E. # 4) is currently DENIED.

Presently, the motion for appointment of counsel is also denied. There is no constitutional right to counsel in civil cases absent “exceptional circumstances.” Cook v. Bounds, 518 F.2d 779, 780 (4th Cir. 1975); Whisenant v. Yuam, 739 F.2d 160, 163 (4th Cir.

1984), abrogated on other grounds by Mallard v. United States Dist. Court for the S. Dist. of Iowa, 490 U.S. 296, 300 n.3 (1989). The existence of exceptional circumstances depends upon "the type and complexity of the case, and the abilities of the individuals bringing it." Whisenant, 739 F.2d at 163 (quotation omitted). The case does not appear to present exceptional circumstances and the motion is denied at this time (D.E. # 3).

Accordingly, the Clerk is DIRECTED to maintain management of the action. Both the motion for appointment of counsel and the motion for medical records are DENIED (D.E. # 3 and # 4). SO ORDERED, this the 15 day of November 2011.



TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE